No. 17-965

In The Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT
OF THE UNITED STATES, ET AL.,
v.
STATE OF HAWAI'I, ET AL.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF AMICI CURIAE Muslim Justice League, Muslim Public Affairs Council, Islamic Circle of North America Council for Social Justice, MPower Change, Justice for Muslims Collective, and Partnership for Advancement of New Americans

SUPPORTING RESPONDENTS AND AFFIRMANCE

BENJAMIN G. SHATZ
Counsel of Record
AMY B. BRIGGS
JOHN W. MCGUINNESS
SIRENA P. CASTILLO
OLUFUNMILAYO O. SHOWOLE
KETAKEE R. KANE
MATTHEW D. BOTTOMLY
AND EVE L. TORRES

MANATT, PHELPS
& PHILLIPS, LLP
11355 West Olympic Blvd.
Los Angeles, CA 90064
BShatz@Manatt.com
(310) 312-4000

Counsel for Amici Muslim Justice League; Muslim Public Affairs Council; Islamic Circle of North America Council for Social Justice; MPower Change; Justice for Muslims Collective; and Partnership for Advancement of New Americans

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BRIEF OF AMICI CURIAE

The Muslim Justice League, Muslim Public Affairs Council, Islamic Circle of North America Council for Social Justice, MPower Change, Justice for Muslims Collective, and Partnership for Advancement of New Americans submit this brief in support of Respondents the State of Hawai'i, et al.[1]

STATEMENT OF INTEREST OF AMICI CURIAE

Amici are organizations that advocate for the dignity and fair treatment of the Muslim community throughout the United States. Amici can provide unique and important insights regarding the impact of the September 24, 2017, Presidential Proclamation 9645 (the "Proclamation" or "Muslim Ban") and how it unfairly subjects Muslims, persons from Muslim-majority countries, and even those simply perceived as Muslim, to unwarranted harassment and religious discrimination by government officials. Moreover, Amici can address the effects and public perceptions caused by a proclamation that targets the Muslim community under the guise of national security. Such effects include the stigmatization of Muslims and Muslim communities, increased

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[1] Counsel for amici authored this brief in whole, and no other person or entity other than amici, its members, or counsel made monetary contributions for the preparation or submission of this brief. Petitioners have provided blanket consent for amicus briefs and Respondents have provided written consent to the filing of this brief.

discrimination, and the discouragement of Muslims and persons from Muslim-majority countries—United States citizens and non-citizens alike—from fully and freely participating in American society for fear of reprisal, directly undermining Amici's work.

This case addresses the legality of the latest incarnation of a Muslim Ban that restricts immigrant and non-immigrant entry into the United States from designated countries, most of which are Muslim-majority. Amici support the arguments that the Proclamation is unconstitutional, and submit this brief to address the deleterious effects of repeatedly targeting members, or perceived members, of a religious community via a policy motivated by a desire to exclude Muslims from the United States. Accordingly, Amici have a substantial interest in the proper resolution of the issues this case presents.

The **Muslim Justice League (MJL)** is an independent nonprofit organization advocating for the protection of human and civil rights that are threatened under national security pretexts, through community education and organizing, and legal and policy advocacy. In the course of providing educational workshops, MJL has fielded an increasing number of questions since the announcement of the Muslim Ban from concerned community members regarding their fears about the consequences of traveling to see family or to pursue educational, professional, or religious objectives. MJL participated as amicus curiae in *Ashcroft v. Abbasi* (U.S. 2017), challenging

government policies and practices that targeted people based on their race, religion, ethnicity, or national origin.

The **Muslim Public Affairs Council (MPAC)** is a community-based public affairs nonprofit organization working for the integration of Muslims into American society. MPAC aims to increase the public understanding of Islam and to improve policies that affect American Muslims, by engaging our government, media, and communities. MPAC's view is that America is enriched by the vital contributions of American Muslims. MPAC works diligently to offer the public a portrayal that goes beyond stereotypes and shows that Muslims are part of a vibrant American pluralism. MPAC has participated as amicus curiae in cases concerning civil liberties (*Boumediene v. Bush* and *al Odah v. U.S.* (U.S. 2007)), immigration (*Arizona v. U.S.* (U.S. 2012)), and religious liberties (*Holt v. Arkansas Dept. of Correction* (U.S. 2014)).

The **Islamic Circle of North America Council for Social Justice (ICNA CSJ)** is a social justice and human rights organization that strives to systematically facilitate assertive Muslim involvement in the field of human struggle for the rights of the poor and oppressed in the United States. ICNA CSJ focuses on a range of issues related to social justice, such as poverty, racism, raising the minimum wage, climate change, and economic inequality. ICNA CSJ's activities include interfaith meetings, public advocacy, civic engagement, and building partnership coalitions around social justice issues.

MPower Change, a project of NEO Philanthropy, Inc., is the nation's largest grassroots Muslim organization—representing over 200,000 members—with a mission focused on building social, spiritual, racial, and economic justice for all people. MPower Change combines digital campaigning and advocacy efforts with community-based organizing, in order to equip communities to build resilience and resist injustice. With membership in diverse Muslim communities that span the United States, MPower Change has worked with individuals and communities directly impacted by the Muslim Ban, and has co-led campaigning efforts resisting the Ban and other discriminatory policies.

The **Justice for Muslims Collective (JMC)** is a community-based organization that combats institutional and structural Islamophobia in the Washington, DC, metro area through grassroots organizing focused on creating mechanisms of community defense for Muslims, building community resilience through healing and wellness, leadership development and training focused on Muslim women, and coalition-building across movements. Since the passage of the Muslim Ban, JMC has led mobilizations against the Ban, political education workshops to raise awareness on the Muslim Ban, organized Know Your Rights workshops for Muslims in the DC-metro area impacted directly and indirectly by the Ban, and organized healing sessions for the community to process the impact of the Ban.

The **Partnership for Advancement of New Americans (PANA)** is a community organizing, public policy, and leadership development hub dedicated to advancing the full economic, social, and civic inclusion of refugees. Led by the communities it serves, PANA amplifies refugee voices to advocate for basic fairness and dignity for all. PANA also provides support to communities directly affected by the Muslim Ban and nationals from Iran, Libya, Somalia, Sudan, Syria, and Yemen, such as by hosting public education, know your rights, and town hall information sessions, media, and advocacy for refugees and their families.

SUMMARY OF ARGUMENT

On September 24, 2017, President Trump issued a Proclamation that will indefinitely bar or limit the entry into the United States of some or all nationals of Iran, Libya, Somalia, Syria, Yemen, Chad, North Korea, and Venezuela. 82 Fed. Reg. 45161 (Sept. 27, 2017). The Proclamation is the Trump Administration's third attempt to limit or bar the entry of nationals from certain Muslim-majority countries and to tie the alleged "risks" of their nationals' entry to the need for enhanced vetting procedures, thus violating the Establishment Clause by creating a disfavored religion in the United States.

The Administration's first attempt to restrain entry from a number of Muslim-majority countries was Executive Order 13,769 ("EO-1"), which barred the entry of nationals of seven predominantly

Muslim countries for a 90-day period. 82 Fed. Reg. 8977 (Jan. 27, 2017).

After EO-1 was enjoined, the Administration issued Executive Order 13,780 ("EO-2") to again attempt to restrain entry from several Muslim-majority countries. 82 Fed. Reg. 13209 (Mar. 9, 2017). Enforcement of significant portions of EO-2 was enjoined by courts, including the District Court of Hawai'i, for again violating the Establishment Clause. The Ninth Circuit affirmed in substantial part the issuance of a nationwide preliminary injunction. *Hawai'i v. Trump*, 859 F.3d 741 (9th Cir. 2017), *cert. granted*, 137 S.Ct. 2080 (2017), *vacated*, 874 F.3d 1112 (9th Cir. 2017). After President Trump issued the Proclamation, this Court vacated the Ninth Circuit's opinion on October 24, 2017, as moot, but notably—and explicitly—"express[ed] no view on the merits" of the case. *Trump v. IRAP*, 138 S.Ct. 353 (2017).

Here, just as with earlier iterations, the injuries the Proclamation inflicts apply to Muslim communities across the country, disrupting personal, professional, and academic activities and unfairly and irreparably stigmatizing Muslims. Further, the blanket, indefinite suspension of entry for millions of Muslims unsurprisingly lacks any rationale whatsoever as to why such entry would be detrimental to the United States. *Hawai'i v. Trump*, 878 F.3d 662, 692-94 (9th Cir. 2017), *cert. granted*, 138 S.Ct. 923 (2018). Because the Muslim Ban, in all of its iterations, is nothing more than religious intolerance masquerading as an attempt to address (unfounded) security concerns, it "plainly discriminates based on nationality in the

manner that [is antithetical to] the founding principles of this Nation." *State v. Trump*, 265 F. Supp. 3d 1140, 1145 (D. Haw. 2017), *aff'd in part, vacated in part*, 878 F.3d 662 (9th Cir. 2017).

ARGUMENT:

THE PROCLAMATION HARMS MUSLIMS THROUGHOUT THE COUNTRY, VIOLATES THE ESTABLISHMENT CLAUSE, AND WAS RIGHTFULLY ENJOINED

I. The Proclamation's effect on Muslims in the United States constitutes injury under the Establishment Clause.

"[T]he clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982). By imposing an indefinite ban on entry from six Muslim-majority countries and proposing either "additional scrutiny" or "enhanced screening and vetting requirements" targeting travelers from Muslim-majority countries, the President has violated this "clearest command" and created a system officially disfavoring Muslims.

Multiple courts evaluating challenges to the Proclamation have found that the harms caused by the Muslim Ban are direct, concrete injuries under the Establishment Clause. *See e.g.*, *IRAP v. Trump*, 883 F.3d 233, 260 (4th Cir. 2018) (holding the "feelings of marginalization and exclusion" and "prolonged separation from close family members who have been rendered categorically ineligible for visas" due to the religiously intolerant disfavoring

of Islam "are actual, concrete injuries that 'affect the plaintiff[s] in a personal and individual way.'") (citing *Spokeo, Inc. v. Robins*, 136 S.Ct. 1540, 1548 (2016)); *IRAP v. Trump*, 265 F. Supp. 3d 570, 600-01 (D. Md. 2017) (identifying "specific, intangible injuries" resulting from "personal contact" with the Proclamation's alleged Establishment Clause violation).

These findings echo previous holdings that the Proclamation's predecessors (EO-1 and EO-2) also disfavored Islam and caused Muslims direct, concrete injuries. For example:

The Ninth Circuit has previously held that the harm to Washington State's university employees and students, the separation of families, and the stranding of state residents abroad due to EO-1 "are substantial injuries and even irreparable harms," amounting to deprivations of constitutional rights. *Washington v. Trump*, 847 F.3d 1151, 1168-69 (9th Cir. 2017).

In *IRAP v. Trump*, the Fourth Circuit found that Plaintiff "Doe #1 has had 'personal contact with the alleged establishment of religion'" due to injuries caused by a prolonged separation from his wife, an Iranian national, and the alleged state-sanctioned message that foreign-born Muslims, like Doe #1, are political outsiders. 857 F.3d 554, 584 (4th Cir. 2017), *as amended* (May 31 and Jun. 15, 2017), *cert. granted*, 137 S.Ct. 2080 (2017), *vacated and remanded*, No. 16-1436, 2017 WL 4518553 (Oct. 10, 2017).

As set forth in *Sarsour v. Trump*, "[t]he Fourth Circuit has held that, as a matter of law, 'loss of

First Amendment rights, for even minimal periods of time, unquestionably constitutes irreparable injury.'" 245 F. Supp. 3d 719, 740 (E.D. Va. 2017). A Maryland District Court further explained, "'when an Establishment Clause violation is alleged, infringement occurs the moment the government action takes place.' ... The Court accordingly finds that Plaintiffs have established a likelihood of irreparable harm when the Second Executive Order takes effect." *IRAP v. Trump*, 241 F. Supp. 3d 539, 564 (D. Md. 2017), *aff'd in part, vacated in part*, 857 F.3d 554 (4th Cir. 2017), *as amended* (May 31 and Jun. 15, 2017), *cert. granted*, 137 S.Ct. 2080 (2017), *vacated and remanded*, No. 16-1436, 2017 WL 4518553 (Oct. 10, 2017); *see also Aziz v. Trump*, 234 F. Supp. 3d 724, 737 (E.D. Va. 2017); *Hawai'i v. Trump*, 241 F. Supp. 3d 1119, 1139 (D. Haw. 2017).

The concrete injuries that Muslims have experienced, and continue to experience, under the three versions of the Muslim Ban include, without limitation:

- ***Painful "prolonged (verging on permanent) separation of family members."*** *IRAP*, 883 F.3d at 260; *see also IRAP*, 265 F. Supp. 3d at 600-01. This is an "imminent, sufficiently 'real' and concrete" injury that causes "a personal and 'particularized'" harm. *IRAP*, 857 F.3d at 583-84.
- ***"The discrete expression of government animus against Islam,"*** including treatment of American Muslims "as an

outsider in [one's] own country" and causing Muslims to feel condemned, demeaned, and disparaged. *IRAP*, 265 F. Supp. 3d at 600-02.

- ***The promotion of harmful stereotypes of Muslims***, such as that a broad travel ban is "needed" to prevent people from certain Muslim countries from entering the United States, and further sending an "alleged state-sanctioned message that foreign-born Muslims" are "outsiders." *IRAP*, 857 F.3d at 584 (citing *Moss v. Spartanburg Cty. Sch. Dist. Seven*, 683 F.3d 599, 607 (4th Cir. 2012)); *Hawai'i*, 241 F. Supp. 3d at 1132. These stereotypes convey the message that "'American Muslims are unwanted, different, and somehow dangerous' as a result of the Proclamation." *IRAP*, 265 F.Supp.3d at 600-01.
- ***Safety concerns***, including "insecur[ity] and fear" regarding one's safety and the safety of loved ones, fear of "more hatred and attacks" against Muslim communities, and being made a "target of abuse and discrimination." *Id.*
- ***Heightened discrimination***, leading to "worry that discrimination against Muslims will persist and interfere with [Muslims'] rights" and questioning about whether to leave the United States so as to shelter one's children from anti-Muslim discrimination. *Id.*
- ***Psychological harm and mental stress***, including the "direct, painful effects" of a

message of "religious condemnations," depression, stigmatization, feeling like a "second-class citizen," and worry about the persistence of discrimination and interference with one's rights on the basis of being Muslim (*IRAP*, 857 F.3d at 585; *IRAP*, 265 F. Supp. 3d at 600-01); "feelings of marginalization and exclusion" (*IRAP*, 883 F.3d at 260); "significant fear, anxiety and insecurity" due to the Muslim Ban, underlying "anti-Muslim attitudes," and "official anti-Muslim sentiment" as well as feelings of isolation, disparagement, and concerns about "the disfavoring of Islam" (*IRAP*, 241 F. Supp. 3d at 552; *IRAP*, 857 F.3d at 584-85); "anxiety, confusion, and distress" due to the uncertainty introduced by the Muslim Ban, and "an uptick in students, employees, and faculty using [university] counseling services" (*Aziz*, 234 F. Supp. 3d at 729); "psychological harm that flows from confronting official action preferring or disfavoring a particular religion" (*IRAP*, 857 F.3d at 585); and being affected by the knowledge that the federal government would discriminate against their ethnicity and religion, feeling targeted as Muslim because of their religious views and national origin, concern about not being able to associate as freely as those of other faiths, and hurt, confusion, sadness, stigma, and other harmful feelings of marginalization, generally (*Hawai'i*, 241 F. Supp. 3d at 1132; *IRAP*, 265 F. Supp. 3d at 600-01).

- ***The loss of First Amendment freedoms***, causing unquestionable irreparable harm from the moment the government action took place (*IRAP*, 857 F.3d at 583-84).
- ***Significant restraint of travel and freedom of movement***, causing, *e.g.*, the separation of families (*Id.*, at 607 (Keenan, J., concurring); *Washington*, 847 F.3d at 1169); the cancellation of personal and professional travel plans abroad or visits from family or colleagues to America (*Aziz*, 234 F. Supp. 3d at 728-29; *Washington*, 847 F.3d at 1159); and disruption of academic activities (*Aziz*, 234 F. Supp. 3d at 728; *Sarsour*, 245 F. Supp. 3d at 729).

Taking the Proclamation in context, it is common sense that the Proclamation is driven by the same anti-Muslim animus as EO-1 and EO-2. *See generally IRAP*, 265 F. Supp. 3d 570. In a *Meet the Press* interview, then-candidate Trump articulated his plan, stating: "People were so upset when I used the word Muslim. ... [Now] I'm okay with that, because I'm talking territory instead of Muslim."[2] In short, by barring nationals from Muslim-majority countries, the Administration is achieving President Trump's campaign pledge of a "shutdown of Muslims entering the United States,"

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[2] Meet the Press (Jul. 24, 2016), https://www.nbcnews.com/meet-the-press/meet-press-july-24-2016-n615706.

as set forth in his aptly named "Statement on Preventing Muslim Immigration."[3]

And unlike EO-1 and EO-2, which were temporary, the Proclamation represents an indefinite extension of restrictions targeting Muslims.[4] With the Proclamation, the Administration again chose to use the bluntest of tools to tackle a problem that does not exist—as demonstrated by the legal challenges faced by the Muslim Ban in its various iterations, there has been no sufficient demonstration of a security need that justifies the Ban. Rather, the only common thread between those affected is their religion.

While the President is provided wide discretion in administering the immigration laws, the policies and directives must be constitutional. The Administration's intentional disfavoring of one religion is unconstitutional.

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[3] *Donald J. Trump Statement on Preventing Muslim Immigration*, Donald J. Trump for President, Inc. (Dec. 7, 2015),

https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration.

[4] Michael Shear, *New Order Indefinitely Bars Almost All Travel From Seven Countries*, N.Y. Times (Sept. 24, 2017), https://www.nytimes.com/2017/09/24/us/politics/new-order-bars-almost-all-travel-from-seven-countries.html.

A. The Muslim Ban unlawfully and injuriously restrains travel among Muslim communities.

The harmful impact of this and previous iterations of the Muslim Ban have been far-reaching—upending the personal, professional, and academic activities of countless Muslim individuals and communities around the world. Amici have been overwhelmed with inquiries from concerned Muslim individuals, citizens and non-citizens alike, who are justifiably worried about the impact of a seemingly never-ending series of bans. Many of their constituents—including Muslims from countries that are not currently banned—have reported confusion about the Proclamation and fear it could be changed at any moment so as to further ensnare them in its effects and restrict their movements to and from the United States. Indeed, the "worldwide review" of countries' "identity-management protocols, information-sharing practices, and risk factors" "in support of immigration screening and vetting," conducted under the province of EO-2, identified 16 countries as "inadequate" and an additional 31 countries as "'at risk' of becoming 'inadequate.'" *Hawai'i*, 878 F.3d at 675 (citing 82 Fed. Reg. at 45161-63). Because "the explanation for how the Administration settled on the list of eight countries is obscured," there is no reassurance that these fears will not be realized and that additional nationals from Muslim-majority countries will also be barred entry to the United States, ever expanding the Muslim Ban. *Id.*, at 676 n.3 (citing *State*, 265 F. Supp. 3d at 1157 n.16).

Like the plaintiffs in the underlying case, Amici's members include Muslims and those from Muslim-majority countries forced to make difficult travel-related decisions on account of the Muslim Ban and facing alienation from loved ones who are banned from visiting them in the United States. In short, Muslims are disproportionally affected despite the Administration's specious assertion of a religiously neutral Proclamation.

1. The Muslim Ban has had a chilling effect on personal activities.

As intended, this and previous iterations of the Muslim Ban have prevented people from the designated Muslim-majority countries from traveling to the United States, often with heart-rending effect on families. Even those with bona fide relationships with people in the United States are being turned away en masse. For instance, an Iranian national mother of a United States Lawful Permanent Resident was recently denied a visa without the option of a waiver after over a year in administrative processing, which was stalled as the various iterations of the Muslim Ban were being litigated.[5] As a result, this mother will miss her daughter's graduation from dentistry school, as well as the birth of her grandchild, and the

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[5] Telephone Interview with Zahra Billoo, Executive Director, and Ammad Rafiqi, Civil Rights & Legal Services Coordinator, Council on American-Islamic Relations, California (Feb. 1, 2018).

daughter will not have her mother by her side as she delivers her first child.[6]

Recent reports of near-universal denials of thousands of waiver applications have raised alarming, unanswered concerns that the waiver process is effectively a pro forma process that results in almost certain denial.[7] Members of one Yemini family initially granted visas on December 4, 2017, to travel to the United States to reunite with their husband and father, an American citizen, were told just ten days later that they were ineligible after the third version of the Muslim Ban took effect.[8] Attorneys advising clients who are navigating this opaque process have reported "extreme frustration" as "[p]eople are basically operating in the blind."[9] Amici further report widespread uncertainty and doubt regarding what rules and processes to follow and whether

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[6] *Id.*

[7] Yeganeh Torbati and Mica Rosenberg, *Exclusive: Visa waivers rarely granted under Trump's latest U.S. travel ban: data*, Reuters (Mar. 6, 2018), https://www.reuters.com/article/us-usa-immigration-travelban-exclusive/exclusive-visa-waivers-rarely-granted-under-trumps-latest-u-s-travel-ban-data-idUSKCN1GI2DW.

[8] Sam Levin, *Tears, despair and shattered hopes: the families torn apart by Trump's travel ban*, The Guardian (Jan. 8, 2018), https://www.theguardian.com/us-news/2018/jan/08/trump-travel-ban-families-affected-first-month.

[9] Torbati and Rosenberg, *supra*, *Exclusive: Visa waivers rarely granted under Trump's latest U.S. travel ban: data.*

they will be effective. As a result, many attempting to navigate the Proclamation are accruing considerable administrative and legal fees without any certainty that their visa and waiver applications will receive due consideration.

Another woman who has been studying for her Ph.D. at Michigan Technological University since 2012 also planned for her mother to attend her May 2018 graduation.[10] In November 2017, her Iranian-national mother traveled to Dubai for a visa interview and was approved for a tourist visa on the same day. However, she did not pick up her visa immediately because she was told she would have to enter the United States within three months of the visa's issuance. Then, in December 2017, after the mother purchased a nonrefundable flight to the United States, her plans of reuniting with her daughter at graduation were derailed when the Proclamation was allowed to take full effect. According to the daughter, who submitted her story to the American Civil Liberties Union, "This is extremely heartbreaking for both of us. I do not know for what crime my family and I are being sentenced and punished, and how my parent coming here to watch me get my Ph.D. degree is a threat to anyone."[11] The ACLU has collected many

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[10] American Civil Liberties Union, *Hanieh*, WWW.ACLU.ORG, https://www.aclu.org/issues/immigrants-rights/hanieh.

[11] *Id.*

more anecdotes detailing the impact the Muslim Ban continues to have on families.[12]

At the popular Instagram account "Banned Grandmas,"[13] people share pictures of their grandmothers with stories that include grandparents missing college and graduate school graduations,[14] being unable to receive medical treatment in the United States,[15] and passing away before being reunited with family over the course of the three versions of the Muslim Ban.[16] And at the sister Instagram account, "Banned Families," individuals share stories about being forced to wait indefinitely for the chance to see their loved ones again as a result of the Proclamation.[17] The

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[12] *See* American Civil Liberties Union, *Living with the Muslim Ban*, WWW.ACLU.ORG, https://www.aclu.org/issues/immigrants-rights/living-muslim-ban.

[13] @BannedGrandmas, Instagram (last visited Mar. 21, 2018), https://www.instagram.com/bannedgrandmas/?hl=en.

[14] @BannedGrandmas, Instagram (Jul. 2, 2017), https://www.instagram.com/p/BWEJI3_HxGf/; @BannedGrandmas, Instagram (Jul. 1, 2017), https://www.instagram.com/p/BWAvUJ_neD-/?hl=en&taken-by=bannedgrandmas.

[15] @BannedGrandmas, Instagram (Jun. 30, 2017), https://www.instagram.com/p/BV-cFrin0U4/?taken-by=bannedgrandmas.

[16] @BannedGrandmas, Instagram (Dec. 5, 2017), https://www.instagram.com/p/BcUokn9Hyw2/?hl=en&taken-by=bannedgrandmas.

[17] @BannedFamilies, Instagram (last visited Mar. 22, 2018), https://www.instagram.com/bannedfamilies/?hl=en.

New York Times has also published a video featuring the firsthand accounts of individuals who are struggling with the confusion and heartbreak of being indefinitely separated from their romantic partners due to the Muslim Ban.[18]

Religious activity has also been chilled. For example, some Muslims in the United States have reported changing the way they practice their religion, including some Muslim women taking off their head scarves and some individuals becoming too fearful to pray in their mosques.[19]

Thus, the devastating impact of the Proclamation is being borne by Muslim citizens, Legal Permanent Residents, and long-term visa holders in the United States, as well as their loved ones abroad.

2. The Muslim Ban has interfered with professional activities.

The Proclamation, like all previous versions of the Muslim Ban, has deeply impacted the professional lives of American Muslims and those traveling to

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[18] Nilo Tabrizy, *He's in the U.S.; She's in Iran: Couples Cope With the Travel Ban*, N.Y. Times (Sept. 26, 2017), https://www.nytimes.com/video/world/middleeast/100000005458989/trump-travel-ban-iranians.html.

[19] Deepa Bharath, *Muslim groups to march with allies to protest travel ban and call for immigration, criminal justice reform*, The Orange County Register (Oct. 13, 2017), http://www.ocregister.com/2017/10/13/muslim-group-to-march-with-allies-to-protest-travel-ban-and-call-for-immigration-criminal-justice-reform/.

the United States to conduct business. Amici report citizen members carrying their United States passports even when traveling domestically for fear of having to provide documentation of citizenship.

The Muslim Ban has also directly affected Amici's professional endeavors. For example, the various iterations of the Muslim Ban have led to MJL disallowing its staff to travel with electronics containing client information. MJL was concerned about how the profiling of Muslims at the border or at airports could lead to government searches of its employees' devices containing confidential client information and privileged communications. This burdens MJL's limited time and resources, requiring MJL employees to make alternate arrangements and additional purchases to ensure that MJL staff can continue their vital work while traveling.

Further, this ban has greatly impacted highly skilled professionals working in the United States. For example, there are over 7,000 physicians working in the United States who trained in the six countries listed in EO-2, many of whom are targeted by the Proclamation.[20] In Los Angeles alone, more than a million patient appointments each year are conducted by the more than 500

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[20] Anna Maria Barry-Jester, *Trump's new travel ban could affect doctors, especially in the Rust Belt and Appalachia*, FiveThirtyEight (Mar. 6, 2017), https://fivethirtyeight.com/features/trumps-new-travel-ban-could-affect-doctors-especially-in-the-rust-belt-and-appalachia/.

physicians in the city from Iran, Libya, Somalia, Sudan, Syria, and Yemen.[21] As the number of non-citizen international medical graduates applying to study in residency programs in the United States declined for the second consecutive year, there are growing concerns that immigrant physicians will increasingly "go to other countries because of the fear of the way they will be treated here, and that could deteriorate the quality of the professionals who come to the United States compared to the past."[22]

As Dr. Clarence Braddock, vice dean for education at the UCLA David Geffen School of Medicine, explained in a statement about the Administration's immigration policies, "We need more physicians to meet the country's growing healthcare needs, and the anxiety and confusion caused by the proposed travel ban and end of [the Deferred Action for Childhood Arrivals program] present a barrier for foreign-born or undocumented physicians seeking to practice medicine in the United States."[23] Many of these highly skilled professionals currently practicing in the United States are already considering leaving the country, and their loss would be devastating for the mostly

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[21] Jaclyn Cosgrove, *Fewer foreign doctors are coming to study in the United States, report shows*, L.A. Times (Mar. 16, 2018), http://www.latimes.com/business/la-fi-trump-immigration-20180314-story.html.

[22] *Id.*

[23] *Id.*

rural, underserved communities in which they practice.[24]

One individual whose story was published by the ACLU started working as an investment banker after graduating with honors from the University of Southern California.[25] He planned to complete his M.B.A. at Stanford, work in venture capital, and then start his own business. As a naturalized citizen, he hoped to "live the American dream" with his fiancée. In December 2017, his Iranian fiancée traveled to Armenia for a visa interview. At the United States embassy, she was assured that her application would be approved and that she just needed to stay in Armenia for an extra day to pick up her processed visa. However, the next day, the Proclamation went into full effect, and her visa was abruptly denied. This young man described this as "the most heart wrenching feeling we have both ever encountered."[26] He wrote that due to the Muslim Ban, he does not feel welcome in the United States. Rather than pursuing his career in the United States, he is starting to make arrangements to relocate to a country where he can live with and marry his fiancée.

The economic impact of the Muslim Ban extends beyond its targets. After being here for 30 years,

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[24] Barry-Jester, *supra*, *Trump's new travel ban could affect doctors, especially in the Rust Belt and Appalachia*.

[25] American Civil Liberties Union, *Seyed Mousavi*, WWW.ACLU.ORG, https://www.aclu.org/issues/immigrants-rights/seyed-mousavi.

[26] *Id.*

a naturalized United States citizen and small-business owner is contemplating leaving the country to be united with her Iranian fiancé. Following a wait of 18 months while navigating the administrative process, her computer engineer fiancé was denied a visa due to the Proclamation. She now faces the choice of remaining in her chosen country alone, or shutting down her growing business, firing her American workers, and relocating elsewhere.[27]

3. The Muslim Ban has also impeded academic activities.

The Muslim Ban has resulted in a sharp drop in foreign student enrollment at universities due to fears of discrimination against Muslim students.[28] According to the Institute of International Education, the number of newly arriving international students declined an average of 7% in 2017, with 45% of campuses reporting drops in new international enrollment.[29] The National Association for College Admission Counseling has warned that the Proclamation "threatens to stifle educational, cultural, and related exchanges and will have immediate and long-term financial

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[27] *See* @BannedFamilies, Instagram (Dec. 5, 2017), https://www.instagram.com/p/BcVMYHnFlqC/; E-mail to author (Mar. 12, 2018, 7:49 PST) (on file with author).

[28] Stephanie Saul, *Fewer Foreign Students Are Coming to U.S., Survey Shows*, N.Y. Times (Nov. 13, 2017), https://www.nytimes.com/2017/11/13/us/fewer-foreign-students-coming-to-us.html.

[29] *Id.*

consequences for the many US high schools and colleges that serve international students."[30]

For example, a professor from the United Arab Emirates reported to the ACLU that she was forced to cancel a study tour and cultural exchange arranged for 20 social work and human service students because "it was too uncertain given how quickly the ban occurred" and the exchange was to include students from affected countries.[31] She described it as a great loss for her students and the students in New York with whom they planned to meet.

One university official stated that fewer students were enrolling "because of concerns about the Trump administration's travel ban."[32] Some Muslim students from countries like India, which is not even subject to the Muslim Ban, were still concerned about the Ban and said they did not feel welcome and safe in the United States as a result.[33] Further, the rhetoric from the White House has

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[30] National Association of College Admission Counseling, *NACAC Opposes Latest Version of Travel Ban* (Oct. 18, 2017), https://webcache.googleusercontent.com/search?q=cache:NmY_AGdLfq4J:https://www.nacacnet.org/news--publications/newsroom/nacac-opposes-latest-version-of-travel-ban/+&cd=10&hl=en&ct=clnk&gl=us.

[31] American Civil Liberties Union, *Lacey Sloan*, WWW.ACLU.ORG, https://www.aclu.org/issues/immigrants-rights/lacey-sloan.

[32] Saul, *supra*, *Fewer Foreign Students Are Coming to U.S., Survey Shows*.

[33] *Id.*

enhanced the perception that the United States is less welcoming and more xenophobic than before.[34]

Even for foreign students who are already enrolled in an American university, the Muslim Ban has had a measurable impact. Amici have been contacted by students on valid visas who are forgoing trips home because they are concerned that their visas may be canceled, leaving their professional and personal future in limbo. A Harvard pre-med student of Syrian and Lebanese descent stated that she did not attend her grandmother's funeral because she feared not being able to return to college.[35] Further, if the Proclamation remains in effect, her parents will not be able to see her graduate in May.[36]

As put by a recent Harvard graduate, "[t]he messaging, the signaling [of the travel ban] is[:] we want a country with less Muslims ... regardless of your contribution in society, regardless of what you do."[37]

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[34] Redden, *International Enrollments: From Flat to Way Down*, Inside Higher Ed. (Sept. 5, 2017).

[35] Cristela Guerra, *Students still uneasy, despite travel-ban ruling*, The Boston Globe (Oct. 18, 2017), https://www.bostonglobe.com/metro/2017/10/17/college-students-hold-prayer-and-vigil-protest-trump-latest-travel-ban/S1YUqjQBtLQ5xjhUl3UTLK/story.html.

[36] *Id.*

[37] *Id.*

4. The Muslim Ban impacts nationals beyond those from the designated countries.

Amici have reported that even those with no ties to the designated Muslim-majority countries have expressed concern about or described unpleasant experiences upon returning from travel outside of the country. For example, MJL knows of a Muslim couple residing in the United States, neither of whom are from the countries currently barred by the Proclamation, who were afraid of going abroad for their honeymoon based on fears that the scope of the Ban could change while they were traveling and bar their reentry to the United States. MJL reports that it was informed by a Muslim graduate student who is also not from a country currently listed in the Proclamation but nevertheless considered forgoing a summer internship abroad due to fears that the Muslim Ban could change once again and prevent a return to the United States.

The unpredictable changes to restrictions and designated countries between EO-1, EO-2, and the Proclamation, combined with the immediate implementation of some restrictions, fuel legitimate concerns that a traveler not subject to present restrictions of the Muslim Ban may be barred entry or reentry based on some future shift. In fact, those concerns are explicitly justified by Section 4 of the Proclamation, which requires regular reports and authorization recommendations for the President to consider extending the indefinite suspensions or limitations to countries not currently identified in the Proclamation.

B. The Muslim Ban promotes harmful stereotypes about Muslims.

Not only are the current and previous iterations of the Muslim Ban premised on offensive and false stereotypes, but they also further perpetuate harm against Muslims across the country by broadly typecasting Muslims and those from Muslim-majority countries as threats to national safety. While campaigning, candidate Trump repeatedly invoked offensive stereotypes in calling for a ban to prevent Muslims from entering the United States,[38] a required registry of Muslims in the United States,[39] and the consideration of shutting down mosques as a purported strategy to fight terrorists.[40]

In candidate Trump's press release calling for "a total and complete shutdown of Muslims entering the United States," he claimed "large segments of the Muslim population" harbored "great hatred towards Americans" and further

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[38] *Donald J. Trump Statement on Preventing Muslim Immigration, supra.*

[39] Mona Chalabi, *Support for Trump travel ban in line with anti-Muslim attitudes in America*, The Guardian (Feb. 2, 2017), https://www.theguardian.com/us-news/2017/feb/02/polls-widespread-backing-trump-travel-ban.

[40] Alan Rappeport, *Donald Trump repeats call to inspect mosques for signs of terrorism*, N.Y. Times (Nov. 16, 2015), https://www.nytimes.com/politics/first-draft/2015/11/16/donald-trump-repeats-call-to-inspect-mosques-for-signs-of-terrorism/.

justified a Muslim Ban by claiming it would protect the country from becoming "the victims of horrendous attacks by people that believe only in Jihad, and have no sense of reason or respect for human life."[41] Candidate Trump further insinuated that a majority of Muslims believe that "murder against non-believers who won't convert, beheadings and more unthinkable acts that pose great harm to Americans, especially women," should become authorized in the United States.[42]

It is therefore no surprise that previous versions of the Muslim Ban have been roundly interpreted "by civil rights organizations and in other Muslim communities across the country: as a ban on Muslims and, more broadly, as a statement that Muslims are not welcome in the United States."[43]

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[41] *Donald J. Trump Statement on Preventing Muslim Immigration, supra.*

[42] *Id.*

[43] Abigail Hauslohner, *Imam: There's an atmosphere of intolerance that says, 'That's okay, that's acceptable now,'* Wash. Post (Mar. 10, 2017), https://www.washingtonpost.com/national/imam-theres-a-climate-of-hate-that-says-thats-okay-thats-acceptable-now/2017/03/09/127f4fd0-0434-11e7-ad5b-d22680e18d10_story.html?utm_term=.76d9792b8d12; *see also* Tracey Wilinson, *Iranian Americans join human rights groups in protesting new ban*, L.A. Times (Mar. 6, 2017), http://www.latimes.com/politics/la-live-updates-9th-circuit-arguments-iranian-americans-others-protest-new-1488825822-htmlstory.html ("Margaret Huang, executive director of the U.S. branch of Amnesty International, said the [revised] order represented 'the same hate and fear with new

All versions of the Muslim Ban rest on, and serve to bolster, harmful and blatantly offensive stereotypes.[44] Like the stereotypes perpetuated during President Trump's campaign, the stereotypes advanced by the Muslim Ban depict "Islam [as] an inherently violent and foreign faith, and Muslims [as] a presumptively subversive and inassimilable class of people,"[45] and further "send a message that Muslims are not welcome in the U.S."[46] "'American Muslims are [being portrayed as] unwanted, different, and somehow dangerous' as a result of the Proclamation." IRAP, 265 F. Supp. 3d at 600-01.

Many Muslims are receiving this message not only from the country's highest office, but from

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packaging' and 'blatant bigotry.' 'It will cause extreme fear and uncertainty for thousands of families by, once again, putting anti-Muslim hatred into policy,' she said, 'and will do nothing to make the country safer.'").

[44] *See* Khaled Beydoun, *Being a Muslim under Trump is risky. That's why many are hiding their identity*, The Guardian (Mar. 30, 2017), https://www.theguardian.com/commentisfree/2017/mar/30/being-muslim-under-trump-risky-many-hiding-identity ("The stereotypes ... are deeply rooted, and readily repackaged and redeployed by Trump's 'Muslim Ban' and rhetoric holding that 'Islam hates us.'").

[45] *Id.*

[46] Human Rights Watch, *US: Trump's new refugee order renews old harms* (Mar. 6, 2017), https://www.hrw.org/news/2017/03/06/us-trumps-new-refugee-order-renews-old-harms.

their neighbors as well, putting some in the harmful position of "religious advocacy and outreach" to combat the Muslim Ban's "pernicious effects." *Sarsour*, 245 F. Supp. 3d at 729. Since the initial Muslim Ban's signing, Muslim parents have been burdened with explaining to their children why their faith has been vilified in official United States policy. One Baltimore mother described finding her 10-year-old daughter crying when she went to pick her up from school; a friend told her that she "wasn't allowed to be friends with people who wear those things on their heads."[47] "Kids," a Pennsylvania parent explained, "don't understand the difference between a green card or a citizen or a visa—but they know that Islam is mentioned all the time, and they want to know why the president is singling out Islam—are we different? Is there something wrong with us?"[48] These conversations have continued under the latest iteration of the Muslim Ban. As a result, some parents have contemplated relocating from the United States in an effort to shield their children from discrimination based on their faith. *See IRAP*, 265 F. Supp. 3d at 600-01.

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[47] Sabrina Siddiqui, *At mosque Obama visited, fear replaces hope as new Trump travel ban looms*, The Guardian (Mar. 14, 2017, 10:23 AM), https://www.theguardian.com/us-news/2017/mar/14/mosque-obama-visited-trump-travel-ban-muslim.

[48] Neil Munshi, *Muslim Americans express anxiety over Trump travel ban*, Financial Times (Feb. 2, 2017), https://www.ft.com/content/ba9f2d88-e905-11e6-893c-082c54a7f539.

In short, each iteration of the Muslim Ban conveys the same false narrative that Muslims are inherently dangerous. These stereotypes foster the stigmatization of Muslim communities, increase discrimination, and effectively prevent Muslims and persons from Muslim-majority countries from fully and freely participating in American society.

C. In targeting Muslims, the Muslim Ban has caused psychological—and arguably, physical—harm.

Muslims across the country have also suffered psychological harm and distress as a result of the Muslim Ban. A recent Somali immigrant reported feeling "lonely" following the announcement of the newest Muslim Ban because it destroyed her dream of bringing her parents over to unite with her toddler children, and stated: "When my children grow up, they will feel the pain."[49] Public health specialists warned that prior versions of the Muslim Ban could result in mental health harms, as those targeted may "experience social isolation and alienation from their community."[50]

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[49] *Around the World and the U.S., New Travel Ban Draws Anger, Applause and Shrugs*, N.Y. Times (Sept. 25, 2017), https://www.nytimes.com/2017/09/25/us/travel-ban-reaction.html.

[50] Lawrence Gostin, et al., *Presidential immigration policies endangering health and well-being?* JAMA (Mar. 23, 2017), http://jamanetwork.com/journals/jama/fullarticle/2613724 ("[L]awful residents such as Muslims could be adversely affected, experiencing social isolation and alienation from their community.").

From puzzlement, confusion, and "fear of not being welcome in this country" or being able to openly and safely practice one's faith[51] to feelings of anxiety about the Proclamation's impact and devastation due to separation from family members,[52] the psychological harms of the Muslim Ban have been concrete and indisputable. *See IRAP*, 883 F.3d at 260 (discussing "feelings of marginalization and exclusion" and "prolonged separation from close family members who have been rendered categorically ineligible for visas" due to the religiously intolerant disfavoring of Islam as "actual, concrete injuries that 'affect the plaintiff[s] in a personal and individual way.'") (internal citations omitted); *IRAP*, 265 F. Supp. 3d at 600-01.

Worse still, the prior versions of the Muslim Ban proved that the dangerous stereotypes this policy invokes can also lead to physical violence.[53]

[51] Bharath, supra, *Muslim groups to march with allies to protest travel ban and call for immigration, criminal justice reform.*

[52] Matt McKinney, *New Trump travel order fuels anxiety among some in Minnesota*, Star Tribune (Sept. 26, 2017), http://www.startribune.com/new-trump-travel-order-sets-off-confusion-anxiety-among-some-in-minnesota/447799313/.

[53] *See* Siddiqui, *supra*, *At mosque Obama visited, fear replaces hope as new Trump travel ban looms* ("'When you talk about the policies being harmful, that's one thing,' said Ahmed Mahmoud, a native of Maryland who attends prayer services at the Islamic Society of Baltimore. 'But the discourse that they use to justify and facilitate the creation of [Trump's] policies—that in and of itself has been harmful and you see that manifesting in the increase in hate crimes, targeting

In February 2017, a gunman in Kansas shot two Indian men, killing one and injuring the other.[54] Before opening fire, he allegedly used racial slurs indicating that he thought the men were Middle Eastern and shouted, "Get out of my country."[55] In May 2017, two men were killed and a third was violently injured in Oregon when they tried to intervene in a verbal attack against a Muslim teen and her African American friend.[56] At one point the attacker allegedly stated that "Muslims should die."[57] In August 2017, an improvised explosive device was used to bomb a mosque in Minneapolis.[58] According to figures provided by the

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especially not just Muslims but anybody who shares the physical traits of Muslims.'").

[54] Mark Berman, *He yelled 'Get out of my country,' witnesses say, and then shot 2 men from India, killing one*, Wash. Post (Feb. 24, 2017), https://www.washingtonpost.com/news/morning-mix/wp/2017/02/24/get-out-of-my-country-kansan-reportedly-yelled-before-shooting-2-men-from-india-killing-one/?utm_term=.6c3c7c2a1ef9.

[55] *Id.*

[56] Maxine Bernstein, *MAX attack unfolded quickly: extremist cut three in neck, police say*, The Oregonian/OregonLive (Jun. 2, 2017), http://www.oregonlive.com/portland/index.ssf/2017/05/horrific_scene_unfolds_on_max.html#incart_river_index#incart_big-photo.

[57] *Id.*

[58] Kurtis Lee, *'There is too much anger out there.' Bombing of a Minnesota mosque leaves Muslims concerned*, L.A. Times

Council on American-Islamic Relations, the tally of anti-Islamic incidents at mosques during the first six months of 2017 was already greater than the total number of incidents in any year between 2009 and 2015.[59]

Such incidents have continued since the announcement of the Proclamation. For example, in October 2017, anti-Muslim graffiti was found in a bathroom at Kent-Meridian High School in Washington.[60] One message read "All Muslims dead on 10/10 #MAGA," short for "Make America Great Again," President Trump's campaign slogan.[61]

Unfortunately, in the midst of increasing anti-Muslim rhetoric, "attacks on conspicuous Muslim expression were hardly confined to one part of the

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(Aug. 5, 2017), http://www.latimes.com/nation/la-na-mosque-bombing-20170805-story.html.

[59] Christopher Ingraham, *American mosques—and American Muslims—are being targeted for hate like never before*, Wash. Post (Aug. 8, 2017), https://www.washingtonpost.com/news/wonk/wp/2017/08/08/american-mosques-and-american-muslims-are-being-targeted-for-hate-like-never-before/?utm_term=.b066b29d76a0.

[60] Nadia Romero, *Anti-Muslim graffiti at Kent-Meridian High sparks extra security*, WWW.Q13FOX.COM (Oct. 28, 2017), http://q13fox.com/2017/10/28/anti-muslim-graffiti-at-kent-meridian-high-sparks-extra-security/.

[61] *Id.*

country, or in rural instead of urban centers."[62] Many American Muslims say they live in an atmosphere in which people feel as though they can voice prejudices or attack Muslims without fear of retribution.[63]

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[62] Khaled Beydoun, Acting Muslim, 53 Harv. C.R.-C.L. L. Rev., (Mar. 1, 2017, Vol. 53 forthcoming) at 39, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2926162; *see also* Hauslohner, *supra*, *Imam: There's an atmosphere of intolerance that says, 'That's okay, that's acceptable now'* ("Law enforcement officials in Texas and Florida are investigating fires at three mosques, at least two of which have been ruled arson. Last month in Kansas, a white man shouting 'Get out of my country' shot dead an Indian engineer, who he apparently believed to be from the Middle East. Near Seattle this month, a masked assailant wounded a Sikh man—a member of an Indian religious minority who are sometimes confused for Muslims because the men wear turbans—after shouting at him to 'go back to your country,' and authorities are investigating it as a hate crime. Police in South Carolina are investigating the shooting death of an Indian man there the day before.").

[63] Mahmoud Mourad, Stephen Kalin, *Muslims at haj are worried about Trump's policies towards them*, Reuters (Sept. 2, 2017), http://www.reuters.com/article/us-saudi-haj-trump/muslims-at-haj-are-worried-about-trumps-policies-towards-them-idUSKCN1BD0N4?il=0.

II. Despite the inclusion of two non-Muslim-majority countries and attempts to sanitize its text, the clear intent of the Muslim Ban is to disfavor and burden Muslims.

The addition of two non-Muslim majority countries, North Korea and Venezuela, does not disguise the anti-Muslim animus of the Muslim Ban. As the Maryland District Court found, the underlying architecture of the Proclamation is fundamentally the same as EO-1 and EO-2, and in fact doubles down by establishing an indefinite travel ban. *IRAP*, 265 F. Supp. 3d at 625. The Cato Institute noted that the Muslim Ban is based on executive whim to achieve a preordained result, instead of on any consistent criteria.[64] Put another way, the Administration intentionally made subjective determinations to result in a disproportionate impact on majority-Muslim nations, and the inclusion of North Korea and Venezuela is merely window dressing.[65] As explained by the district

[64] David Bier, *Travel Ban Is Based on Executive Whim, Not Objective Criteria*, Cato at Liberty (Oct. 9, 2017), https://www.cato.org/blog/travel-ban-based-executive-whim-not-objective-criteria.

[65] Kevin Lui, *President Trump Added Three New Countries to His Travel Ban. Here's What to Know About Them*, Time Magazine (Sept. 25, 2017), http://time.com/4955280/donald-trump-new-travel-ban-what-to-know/ ("The administration is once again making cosmetic adjustments to the Muslim ban in hopes that it will pass the barest possible definition of anything else," Johnathan Smith, legal director of legal advocacy group Muslim Advocates, said in a statement. "The

court, "[T]he Venezuela ban is qualitatively different from the others because it extends only to government officials, and the ban on North Korea will, according to State Department statistics, affect fewer than 100 people, only a fraction of one percent of all those affected by the Proclamation." *IRAP*, 265 F. Supp. 3d at 623.

In a separate challenge to the Proclamation, the Fourth Circuit rejected the Government's assertion that "[t]he inclusion of those [two] non-Muslim-majority countries in the Proclamation underscores [a] religion-neutral purpose," instead finding that "a reasonable observer could hardly 'swallow the claim' that the addition of North Korea and Venezuela to the twice-enjoined travel ban was anything more than an attempt to 'cast off' the 'unmistakable' religious objective of the earlier executive orders." *IRAP*, 883 F.3d at 268.

Notably, after portraying Muslim-majority countries subject to the Ban as "suspect" and the people as "SO DANGEROUS!",[66] and further insisting that the "travel ban" was for "certain DANGEROUS countries, not some politically correct term that won't help us protect our

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vast majority of the executive order is completely unchanged.").

[66] Donald J. Trump (@realDonaldTrump), Twitter (Feb. 11, 2017, 4:12 AM), https://twitter.com/realDonaldTrump/status/830389130311921667.

people!",[67] President Trump requested that the Justice Department "seek [a] much tougher version"[68] of the Muslim Ban as legal challenges to EO-2 were successfully making their way through the courts. President Trump also expressed regret for having to revise the Muslim Ban in light of the successful court challenges.[69] And just days before the Proclamation was issued, President Trump declared that "The travel ban into the United States should be far larger, tougher and more specific—but stupidly, that would not be politically correct!"[70]

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[67] Donald J. Trump (@realDonaldTrump), Twitter (Jun. 5, 2017, 6:20 PM), https://twitter.com/realDonaldTrump/status/871899511525961728.

[68] Donald J. Trump (@realDonaldTrump), Twitter (Jun. 5, 2017, 3:37 AM), https://twitter.com/realDonaldTrump/status/871677472202477568.

[69] Matt Zapotosky, Kalani Takase, Maria Schetti, *Federal judge in Hawaii freezes President Trump's new entry ban*, Wash. Post (Mar. 16, 2017), https://www.washingtonpost.com/local/social-issues/lawyers-face-off-on-trump-travel-ban-in-md-court-wednesday-morning/2017/03/14/b2d24636-090c-11e7-93dc-00f9bdd74ed1_story.html?utm_term=.2b9167813bd3.

[70] Donald J. Trump (@realDonaldTrump), Twitter (Sept. 15, 2017, 3:54 AM), https://twitter.com/realDonaldTrump/status/908645126146265090.

These statements highlight the Administration's continued commitment, carried through to this Proclamation, to exclude people from the United States on the basis of their religious identity, thereby causing irreparable harm to Muslims across the country. These statements cannot be dismissed as campaign rhetoric. Indeed, these are statements made or endorsed by President Trump to explain the reasoning behind, and support the continuance of, his Muslim Ban.

III. The focus on Muslims and Muslim-majority countries is divorced from evidence, ill-conceived, and ill-advised.

In stark contrast to the Administration's claims, reports clearly demonstrate that Muslims, including Muslim immigrants, pose an infinitesimal threat to national security.[71] For

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[71] Muslim immigrants are a very small portion of the American population. The Pew Research Center estimates that there were about 3.3 million Muslims living in the United States in 2015—approximately 1% of the total population. Approximately 10% of all immigrants are Muslim, and approximately half of all Muslims in the United States immigrated in the past 25 years. Thus, recent immigrants make up approximately 0.5% of the total population. Pew Research Center, *A new estimate of the U.S. Muslim population* (Jan. 6, 2016), http://www.pewresearch.org/fact-tank/2016/01/06/a-new-estimate-of-the-u-s-muslim-population/; Pew Research Center, *The religious affiliation of U.S. immigrants: majority Christian, rising share of other faiths* (May 17, 2013),

example, an assessment of the initial executive order by the Department of Homeland Security reported that the targeted Muslim-majority countries were "rarely implicated" in U.S.-based terrorism and that citizenship (including citizenship from a Muslim-majority country) is an unreliable indication of a terrorist threat.[72]

President Trump recently claimed that a "NEW report from DOJ & DHS shows that nearly 3 in 4 individuals convicted of terrorism-related charges are Foreign-born" as justification for his travel bans.[73] In reality, the report (originally mandated

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http://www.pewforum.org/2013/05/17/the-religious-affiliation-of-us-immigrants/#muslim.

[72] Matt Zapotosky, David Nakamura, Abigail Hauslohner, *Revised executive order bans travelers from six Muslim-majority countries from getting new visas*, Wash. Post (Mar. 6, 2017), https://www.washingtonpost.com/world/national-security/new-executive-order-bans-travelers-from-six-muslim-majority-countries-applying-for-visas/2017/03/06/3012a42a-0277-11e7-ad5b-d22680e18d10_story.html?utm_term=.f4a41594a2f8 ("A Department of Homeland Security report assessing the terrorist threat posed by people from the seven countries covered by the president's original travel ban had cast doubt on the necessity of the executive order, concluding that citizenship was an 'unreliable' threat indicator and that people from the affected countries had rarely been implicated in U.S.-based terrorism.").

[73] Donald J. Trump (@realDonaldTrump), Twitter (Jan. 16, 2018, 6:20 PM),

by EO-2) creates a false narrative by explicitly excluding United States domestic terrorism convictions and included cases in which defendants did not enter the United States through the immigration system, but rather were extradited to the United States to face trial.[74] The report provided no specific statistics regarding the countries barred by the Proclamation, further demonstrating that it is devoid of any rationale in support of targeting these Muslim-majority countries. 82 Fed. Reg. 8977. As the Ninth Circuit highlights in its injunction of the Proclamation, the unprecedented scope of this Muslim Ban has been implemented without making ***required*** findings to justify the conclusion that permitting entry of nationals from the eight banned countries would be detrimental and result in harm to the interests of the United States. *Hawai'i*, 878 F.3d at 693.

All told, the newest version of the Muslim Ban, like previous attempts, does nothing to make the United States safer.[75] Instead, the Proclamation

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https://twitter.com/realDonaldTrump/status/953406423177859073.

[74] Julie Hirschfeld Davis, Ron Nixon, *White House Fuels Immigration Debate With Terrorism Statistics*, N.Y. Times (Jan. 16, 2018), https://www.nytimes.com/2018/01/16/us/politics/trump-immigration-terror-convictions.html.

[75] Alejandro Beutel, *Data on Post-9/11 Terrorism in the United States*, Muslim Public Affairs Council (Jun. 2012), http://www.mpac.org/assets/docs/publications/MPAC-Post-911-Terrorism-Data.pdf.

traffics in prejudicial stereotypes, contributes to a climate of distrust toward Muslims in the United States and abroad, and has further stoked fears in the Muslim community that "the Trump Administration would scrutinize their religious identity with an unprecedented degree of suspicion and heavy-handed policy."[76]

CONCLUSION

This Court should affirm.

Respectfully submitted,

BENJAMIN G. SHATZ
Counsel of Record
AMY B. BRIGGS, JOHN W. MCGUINNESS, SIRENA P. CASTILLO, OLUFUNMILAYO O. SHOWOLE, KETAKEE KANE, MATTHEW BOTTOMLY, AND EVE L. TORRES

Counsel for Amici
Muslim Justice League, Muslim Public Affairs Council, Islamic Circle of North America Council for Social Justice, MPower Change, Justice for Muslims Collective, and Partnership for Advancement of New Americans

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[76] Beydoun, *Acting Muslim*, *supra* at n.48.